

Committee on Resources

Full Committee

Witness Statement

STATEMENT OF LORETTA TUELL, ACTING DIRECTOR, OFFICE OF TRIBAL SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON RESOURCES, U.S. HOUSE OF REPRESENTATIVES ON H.R. 361, A BILL "TO PROVIDE FOR ADMINISTRATIVE PROCEDURES TO EXTEND FEDERAL RECOGNITION TO CERTAIN INDIAN GROUPS, AND FOR OTHER PURPOSES."

September 15, 1999

Good morning, Mr. Chairman and members of the Committee. Thank you for the opportunity to present our views on H.R. 361, the Indian Federal Recognition Administrative Procedures Act of 1999. As noted in earlier testimony on similar bills, the Administration shares the Committee's concern for providing a fair and effective acknowledgment process. The Department supports the efforts to improve the acknowledgment process which is embodied in H.R. 361. However, the Department cannot support the current bill as written without some amendments which I will outline within my statement.

Background

Federal acknowledgment entitles Tribes to the immunities and privileges available to federally recognized Tribes by virtue of a government-to-government relationship with the United States of America, as well as the responsibilities, powers, limitations, and obligations of those tribes. Federal acknowledgment grants tribes protection, services, and monetary benefits from the Federal Government.

The Branch of Acknowledgment and Research (BAR) was established under the BIA for the specific purpose of reviewing and evaluating petitions and providing reports and recommendations to the Assistant Secretary for Indian Affairs (AS-IA). The AS-IA makes the final decision on these acknowledgment petitions based on the facts of each case. The BAR staff exists for the main purpose of implementing 25 CFR Part 83, *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe*.

Recent Developments

The Department appreciates the work done by the Committee and Mr. Faleomavaega's staff in your efforts to ensure a timely, fair and objective process. The BAR has come under criticism over the past several years. We are committed to work with the Committee to improve the acknowledgment process.

We note that H.R. 361 would include Hawaii within its geographic scope. We also note that the Department of Justice has acknowledged that "Congress long ago identified Native Hawaiians as an indigenous group falling within its Indian Affairs power." We are committed to working on language to clarify the Native Hawaiians rights under the framework of federal law.

Areas Supported within H.R. 361

The BIA has been working over the years on making some changes to the Federal Acknowledgment Process. There are certain parts of H.R. 361 that we support and I will highlight as follows.

First, it maintains the acknowledgment , nction within the Department of the Interior which has historically been responsible for Indian affairs.

Second, it establishes the criteria for acknowledgment through legislation, rather than through regulation. The Department supports this change as a means of affin-ning the Department's authority and giving clear Congressional direction as to what the criteria should be.

And third, Congressional ratification of acknowledgment standards would speed up the process because the Department would no longer have to spend time and resources defending litigation challenging its authority to acknowledge tribes or the specific criteria used to do so. While several recent court decisions have upheld the Secretary's authority in this area, Congressional support would preclude further challenges.

Areas of Concern

We have also noted that some issues are not addressed by the bill. Wt recommend additional provisions that would:

- (1) Define the process as to how the petition will be reviewed;
- (2) Provide detailed standard of proof as in 83.6 (d) and (e) of 25 CFR, which mandates that a reasonable likelihood standard of proof, equivalent to preponderance of evidence, be used;
- (3) Clarify the Privacy Act protections and Freedom of Information Act exemptions when the Commission, a petitioner, or a concerned party uses or requests other tribes' rolls or membership lists;
- (4) Provide guidance as to how to address the splintering of petitioning groups and the subsequent submission of letters of intent and documented petitions by factions of petitioning groups;
- (5) Provide clarification on the sunset rule; and
- (6) Provide the definition of the administrative record for purposes of judicial review.

We understand that the Office of Personnel Management has technical concerns regarding personnel provisions in the bill.

This concludes my prepared statement and I look forward to continuing our dialogue with Committee staff on this issue. I will be happy to answer any questions the Committee may have.

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